

## **CALIFORNIA FRANCHISE TAX BOARD**

Internal Procedures Manual

General Tax Audit Manual

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### **6000 RESEARCH**

Your desktop provides access to online research. Online research is independent of PASS. Even if you do not have access to the PASS system, you can access online research through the Internet.

In addition to online research, various hard copy tax services are available. The extent of the hard copy services varies by location. We recommend online research as the first research source. Use the hard copy tax services to complement the online research services.

GTAM 6100	RESEARCH GUIDELINES
GTAM 6200	RESEARCH & REFERENCE MATERIALS
GTAM 6300	FEDERAL CITATIONS - COURT CASES, REVENUE PROCEDURES & RULINGS
GTAM 6400	CALIFORNIA CITATIONS - COURT CASES, RULINGS, AND NOTICES
GTAM 6500	PASS BOTTOM DRAWER

Reviewed: April 2003

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### 6100 RESEARCH GUIDELINES

All audit recommendations must conform to established laws and legal interpretations. You should attempt to resolve issues *before* they reach the protest level. Follow the general research guidelines listed below:

- Identify potential issues early in the examination of the returns.
- Gain an overview of the subject and understand the documents/information needed to resolve the issues.
- Examine the schedules attached to the returns.
- Ask the taxpayer or representative questions.
- Write down all information not supported by documents to provide a paper trail and basis for future decisions.
- Follow up on all material you read. List relevant rulings and cases.
- Keep a record of all areas examined, successful or not.
- Learn to skim court cases. Read the head-notes and then read the opinion. The opinion will summarize the facts and reveal if the case is relevant. When you find a case that appears relevant, study the entire case in detail. *Do not rely solely upon the head notes and opinion.*
- In general, a more current case carries greater weight, since the court presumably considered the previous decisions.
- Check the citator. Have the selected cases been overturned?
- Consider other sources, such as technical manuals.
- Determine how to resolve the issue:
  - Do all of the facts gathered pertain to the issue?
  - What are our alternatives?
  - Do we require additional facts or audit activity?
- Discuss the audit findings with the taxpayer. Review the taxpayer's position and all cases in support of the taxpayer's position.

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## 6200 RESEARCH & REFERENCE MATERIALS

The following is a list of research and reference material the audit staff can use. This list is not all-inclusive. Some of this material may not be available through the online research services. You may also refer to one of the hard copy tax services.

1. **Franchise Tax Board Materials** - You can find the materials either online or in each office's library. This information includes:
  - Legal Rulings (citable).
  - Legal Memos (*not citable*).
  - FTB Notices - previously Chief Counsel Letters or Tax Service Letters (citable).
  - Information Letters/Announcements (*not citable*).
  - Audit Program Reports – also called APRs (*not citable*; however, the reasoning of an APR may be used to support an audit position).
  - Audit Branch Procedure Statements – also called ABPS (*not citable*; however, you may use the reasoning of an APR to support an audit position).
  - Chief Counsel Rulings (*not citable*).

**NOTE:** The above listing constitutes the Compliance Programs, Administration Branch, and Legal Branch's interpretations. The material can be generated internally or initiated by a taxpayer's request.

- Board of Equalization Decisions (citable unless unpublished)
- Superior Court (*not citable*)
- Court of Appeals, and California Supreme Court decisions (citable)
- California Administrative Code (citable regulations)
- Property Tax Rolls

**NOTE:** Property tax rolls are useful tools for an auditor. Property tax records are maintained on microfiche in Central Office and online research. Field auditors can get the information from the county where the property is located. Information generally available on property tax rolls includes:

- Names of property owners.
- Addresses of all properties owned by the taxpayer statewide or by county.
- Parcel number.
- Purchase date.

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- Purchase price.
- Assessed value of land.
- Assessed value of improvements.
- Homeowner's exemption.
- Land use: single family residence, duplex, condominium, multi-use, commercial, industrial, agricultural, etc.
- Sometimes the year built, square footage, number of rooms.

You can access county property tax rolls three ways:

- Alphabetically - name of property owner.
- Situs - street address.
- Parcel number.

You can only access statewide property tax rolls alphabetically.

2. **Internal Revenue Service Materials - NOTE:** The IRS is bound by rulings. However, the *rulings do not have the same authority as regulations*. The Internal Revenue Service has four interpretative announcements:
- **Revenue Rulings.** These are official interpretations of facts and how the law applies to those facts. Rulings are citable if the facts are the same. However, if the facts are not the same, you may apply the reasoning behind the ruling. You can find rulings through online research and within each office's library.
  - **Revenue Procedures.** These are administrative practices followed by the IRS, such as the procedure used in changing accounting method. They carry the same weight as Revenue Rulings and are citable. You can find Revenue Procedures through online research and within each office's library.
  - **Technical Information Release.** These releases are not published but can be found within many tax services. Technical Information Releases are usually after-the-fact rulings requested by the technical staff. *They are not citable*; however, you may apply the reasoning behind the Release. You can find Technical Information Releases in each office's library.
  - **Letter Rulings and Technical Advice Memoranda.** These are responses to formal requests by taxpayers, regarding specific tax consequences, before a transaction occurs or before filing a return. You can find Letter Rulings through online research and within each office's library. You can find Technical Advice Memoranda in each office's library, within the Internal Revenue Bulletins. Letter Rulings

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and Technical Advice Memoranda are *not citable*; however, you may apply the reasoning behind them.

### 3. **Federal Court Cases** - The federal court system is divided into three levels:

#### **Lowest Level (carries the least weight):**

- Tax Court (national court)
- District Court
- U.S. Claims Court, formerly Court of Claims (national court)

All decisions can be appealed to the next level.

#### **Middle Level:**

- Court of Appeals
- Court of Appeals for Federal Circuit (hears appeals only from the U.S. Claims Court)

All decisions can be appealed to the Supreme Court if there is a constitutional issue involved.

#### **Highest Level (carries the most weight):**

- Supreme Court

Final appeals may be granted when there is a conflict between two or more circuit court of appeals. *That a higher court denies a hearing does not necessarily mean that it agrees with the lower court's decision.*

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### 6300 FEDERAL CITATIONS - COURT CASES, REVENUE PROCEDURES & RULINGS

The following shows the appropriate citation for Tax Court Cases, Tax Court Memorandum Decisions, District Court Cases, Court of Appeals Cases, Court of Appeals Cases for the Federal Circuit, Supreme Court Cases, Revenue Rulings, and Revenue Procedures:

**Tax Court Cases** - Only the U.S. Government Printing Office publishes Tax Court cases. Cite as,

*Name, Volume Number, TC, Page and Year.*

For example: *Gator Oil Co. 66 TC 145 (1976)*. If not yet in bound form, use the decision number instead of the page number. For Board of Tax Appeals, use "BTA" in place of "TC." If the Internal Revenue Service loses a Tax Court regular decision, it will publish an "Action on Decision" in the Internal Revenue Bulletins, in which they acquiesce (agree to) or do not acquiesce to the court's decision.

**Tax Court Memorandum Decisions** - The U.S. Government Printing Office does not officially publish Tax Court Memorandum Decisions. They are currently published by Commerce Clearing House (CCH), and were published by Prentice-Hall (P-H). They frequently involve factual matters, rather than law precedent, and are less authoritative than regular decisions. CCH Tax Court Memo decisions are cited as:

*Name, Volume Number, TCM, Page, TC MEMO, Year, and Decision Number.*

For example: *Andrew Crispo Gallery, Inc., 63 TCM 2152, TC Memo. 1992-106*. Decisions published by other services are similarly cited.

**District Court, Court of Appeals, Court of Appeals for the Federal Circuit, and Supreme Court Cases** - CCH and RIA publish these cases.

- The decisions published by CCH are cited as:

*Name, Volume, USTC, Paragraph Number, Name of the Court, Affirming or Reversing Prior Decision (if applicable), Volume of Prior Decision,*

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USTC or TC or TCM, *Paragraph Number, Name of the Lower Court, and Year of Lower Court Decision.*

For example: *Tuck, 60-2 USTC, Para. 11968 (CA-9) AFF'd 59-1 USTC Para. 11872 N.D. CAL. (1959).* This citation tells us that the U.S. Court of Appeals, 9th Circuit, decided the Tuck case in 1960. The Court of Appeals affirmed the 1959 decision of the Northern District Court of California.

- Decisions published by other services are similarly cited. RIA shows "AFTR" in place of the "USTC."

### Revenue Rulings

- In bound form, cite as follows: *REV.RUL. 82-11 1982-1 CB 51.* This cite tells us that the eleventh ruling of 1982 can be found in the 1982 Cumulative Bulletin, volume one, at page 51.
- In unbound form, cite as follows: *REV.RUL. 82011 1982 2 IRB 7.* This cite tells us that the eleventh ruling of 1982 can be found in the second Internal Revenue Bulletin issued in 1982, at page 7.

**Revenue Procedures** are cited the same way as Revenue Rulings, except that REV. PROC. is substituted for REV. RUL.

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### 6400 CALIFORNIA CITATIONS - COURT CASES, RULINGS, AND NOTICES

The following examples show the appropriate citation for California Supreme Court Cases, Court of Appeals Cases, Board of Equalization Cases, Legal Rulings, and FTB Notices.

#### California Supreme Court Cases –

- The following abbreviations relate to the publication sources for California Supreme Court cases:
  - *Cal.* = California Reports
  - *Cal. Rptr.* = California Reporter
  - *P.* = Pacific Reporter
  - Cite cases published by CCH as:

***Name, Volume, Publication Source, Series within the Volume, Page, Year.***

For example, *Barclays Bank International. Ltd. v. Franchise Tax Board*, 2 *Cal* 4th 708 (1992).

- Cite cases published by RIA as:

***Name, Year, Volume, Publication Source, Series within the Volume, Page.***

For example, *Barclay's Bank International Ltd. v. Franchise Tax Bd.* (1992) 2 *Cal.* 4th 708.

#### Court of Appeals Cases –

- The following abbreviations relate to the publication sources for California Court of Appeals cases:
  - *Cal. App.* = California Appellate Reports
  - *Cal. Rptr.* = California Reporter
  - *P.* = Pacific Reporter
- Decisions published by CCH are cited as:

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For example, *Tenneco West, Inc. v. Franchise Tax Board*, 234 Cal.App.3d 1510, (1991).

- Cite decisions published by RIA as:

***Name, Volume, Publication Source, Series, Page, Year.***

For example, *Tenneco West, Inc. v. Franchise Tax Bd.* (1991) 234 Cal.App.3d 1510.

**Board of Equalization Cases** – Cite decisions as, "***Name, Cite, Date.***" For example, *Sunglass Products of California*, 1983-SBE-196, September 15, 1983. Board of Equalization citations may also include a notation such as 83-SBE-196. This notation tells that this is the 196<sup>th</sup> ruling by the State Board of Equalization in 1983.

**Franchise Tax Board Legal Rulings** are cited as follows: ***Legal Ruling 98-1*** or ***FTB LR 98-1***. This citation tells us that this ruling is the first ruling we issued during the year 1998.

**Franchise Tax Board Notices** are cited as follows: ***FTB Notice 98-10***. This citation tells us that this notice is the tenth notice we issued during the year 1998.

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### **6500 PASS BOTTOM DRAWER**

You may store research material in the Bottom Drawer file. The Bottom Drawer provides the user with a search function, to enable the retrieval of stored research information. *Only the owner can access this file.*

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